UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES W. DENNIS,

Petitioner and Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
et al.,

Respondent and Appellee.

No. 22534

APPELLEE'S BRIEF

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vs.)
)
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)
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APPELLEE'S BRIEF

JURISDICTION

Appellant, seeking review of an order of the District Court denying his petition for a writ of habeas corpus,[1] invokes the jurisdiction of this Court under Title 28, United States Code section 2253.

STATEMENT OF THE CASE

A. Proceedings in the State Courts.

On July 13, 1960, appellant Charles William Dennis was charged with a series of heinous crimes, *i.e.*, assault with intent to commit murder (Cal. Pen. Code § 217), kidnapping with bodily harm (Cal. Pen. Code § 209), first degree robbery (Cal. Pen. Code § 211), and forcible rape (Cal. Pen. Code § 261, subd. 3), by indictment filed in the Superior Court of Riverside County. Upon arraignment appellant

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[1] A copy of this order is attached hereto as Appendix A.

entered pleas of not guilty and not guilty by reason of insanity and, on September 21, 1960, he was committed to Patton State Hospital pursuant to sections 1368 and 1370 of the California Penal Code (TR 40).[2]

On September 12, 1962, a bench warrant was issued by the superior court containing a certification by the superintendent of the Patton State Hospital that appellant was competent to stand trial and that he had left the hospital without permission. The certificate suggested appellant's return to the custody of the court (TR 40).

Appellant was eventually apprehended in Florida and was brought before the court for arraignment on September 24, 1962, at which time the public defender was appointed to represent him (TR 40).

On September 28, 1962, appellant, represented by the public defender, withdrew his former pleas and entered a plea of guilty to the charges under section 1192.3 of the California Penal Code.[3] Appellant waived time for sentence

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2. These sections empower the trial court, in case of doubt as to a defendant's competency to stand trial, to try and determine the issue of his present sanity and if the defendant is found insane, to commit him to the state hospital for treatment until he is restored to competency.

3. That section provides as follows:

"Upon a plea of guilty to an information or indictment for which the jury has, on a plea of not guilty, the power to recommend, the discretion of imposing, or the option to impose a certain punishment, the plea may specify the punishment to the same extent as it may be specified by the jury on a plea of not guilty. Where such plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant cannot be sentenced to a punishment more

and was committed to prison that day (TR 40, 44-47).

Appellant did not appeal; his application to the California Supreme Court for a writ of habeas corpus was denied on October 13, 1965 (TR 6-7).

B. Proceedings in the Federal Courts.

On March 2, 1966, appellant filed a petition for a writ of habeas corpus in the court below (TR 1). That same day an order to show cause was issued (TR 33).

Appellees, respondents below, on March 25, 1966, filed a return to the order to show cause (TR 38). Appellant filed a traverse on April 13, 1966 (TR 53).

On December 16, 1966, the District Court filed a memorandum and order directing appellant to supply the court with additional facts bearing on his allegation that his plea of guilty was involuntary (TR 89). In the same order appellees were directed to supply the court with transcripts of all judicial proceedings relating to appellant and all medical reports bearing on his mental condition. A copy of this order is appended to this brief as Appendix B. On March 2, 1967, appellees filed the requested documents.[4/]

On October 10, 1967, the District Court filed an order and opinion denying appellant's application for a writ of habeas corpus, discharging the order to show cause, and dismissing the proceedings (TR 125). By order dated

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4. A copy of the transcript of the state proceedings at which appellant entered his plea is appended hereto as Appendix C.

November 3, 1967, his petition for rehearing was denied, however, he was granted until December 10, 1967, to file a notice of appeal (TR 158).

On January 15, 1968, appellant's notice of appeal was filed and that same day the District Court certified that there was probable cause to appeal and granted appellant's motion for leave to proceed in forma pauperis (TR 162-163).

STATEMENT OF FACTS

This case involves the collateral review of a conviction entered on appellant's plea of guilty. The procedural history of the case has been recited above, and since the District Court concluded that an evidentiary hearing was not warranted the precise question presented on appeal is whether petitioner's factual allegations, considered in the light of the state court records, stated grounds for relief on habeas corpus. These allegations were fairly summarized in the opinion of the District Court from which we quote as follows:

> "Petitioner contends (1) that he was adequately represented by counsel, and (2) that his pleas of guilty to the above charges were involuntary, alleging in substance and effect that he was mistreated by officials after his arrest in July, 1960 and during his stay at Patton State Hospital; that after his return to court from Florida, his court-appointed counsel visited him for the first and only time on September 27, 1962; that the attorney, Mr. Biddle, had been a member

of the District Attorney's staff when petitioner was originally charged in 1960; that the attorney advised him that his case was serious, threatened petitioner's life with the gas chamber and pressured him into pleading guilty; that his attorney told him that his escape from the hospital had made everyone mad at him and, further, told him:

> 'That if petitioner would plead guilty, he, Mr. Biddle, could get petitioner life imprisonment. Mr. Biddle explained that California did not have such sentence as life without possibility of parole, that petitioner would be eligible for parole after seven years. He warned petitioner that if he plead guilty that the Presiding Justice would state life without possibility of parole but only for the benefit of public and that petitioner was not to become upset when the Judge state (sic) life without possibility of parole. But if petitioner wished to have him, counselor, fight the case petitioner would receive the death sentence, because everybody were (sic) mad as (sic) petitioner for running away from the hospital.' (Traverse 2d, p. 13).

"Petitioner further alleges in substance that

his counsel pointed out to him that he was a native of Georgia and expressed the view that 'if you were accused of raping and robbing white women and shooting a white man in Georgia - why I doubt whether you would have gotten to the jail'; that petitioner did not know what else to do but to let his counsel enter the pleas of guilty 'to charges petitioner did not commit.'" (TR 126-127).

APPELLANT'S CONTENTIONS

1. Appellant's allegation that his plea was involuntary required an evidentiary hearing.

2. Appellant's allegations respecting his relationship with his court-appointed attorney required an evidentiary hearing.

SUMMARY OF RESPONDENT'S ARGUMENT

The District Court properly denied appellant's petition because his allegations, considered in the light of the state records, did not state grounds for relief on federal habeas corpus.

ARGUMENT

APPELLANT'S PETITION DID NOT STATE GROUNDS FOR RELIEF ON HABEAS CORPUS

The assumption underlying the arguments in appellant's brief seems to be that the District Court necessarily erred when it denied his application without holding an evidentiary hearing. This assumption is erroneous, because a state prisoner is not entitled to an evidentiary hearing unless he comes forward with allegations of fact which would

warrant the granting of a writ of habeas corpus. See generally, Briley v. Wilson, 376 F.2d 802 (9th Cir. 1967). In the present case the court below, after careful consideration of petitioner's application and respondent's return to the order to show cause, directed respondent to produce all available records of the state court proceedings, and, what is significant for present purposes, requested appellant to file a supplement to his petition. In this request the court gave appellant detailed instructions as to the specific factual matters his supplement should contain. See Appendix B. The procedure followed by the District Court did not place upon appellant "any burden of complying with technicalities; it simply demand[ed] of him a measure of frankness in disclosing his factual situation." In re Swain, 34 Cal.2d 300, 304 (1949).

Only after examining the documents filed by the respective parties did the District Court, having satisfied itself that an evidentiary hearing would serve no purpose, proceed to deny appellant's petition for the writ. The question on appeal is whether that denial is correct. We submit that it was.

On this appeal, petitioner contends that his plea was involuntary for several distinct reasons. First, he contends that he pleaded guilty under the misapprehension that he had been promised a life sentence with the possibility of parole after seven years. There are two answers to this particular contention. First, as this Court has said,

> "It has been held, and we agree, that mere disappointment at the severity of the sentence received upon a plea of guilty is no ground for habeas corpus or other similar relief even where defendant's counsel has expressed an opinion that leniency will be granted." Gilmore v. People of the State of California, 364 F.2d 916, 919 (9th Cir. 1966).

The second answer to petitioner's argument is that it appears with unmistakable clarity from the record of the entry of plea (Appendix C) that appellant entered the plea of guilty to the kidnapping charge with the stipulation that the punishment would be life imprisonment without possibility of parole and that this fact was clearly explained to him by the trial judge. Thus, the District Court could properly conclude that even if an evidentiary hearing were held and petitioner were permitted personally to testify to his allegation that he thought he would receive only a life sentence with the possibility of parole, denial of the writ would nonetheless be required in view of the clarity of state court record on this issue as well as the existing law that an expectation of leniency will not vitiate an otherwise voluntary plea. Gilmore v. People of the State of California, supra.

Petitioner also argues that he was in "an inherently coercive situation" (AOB 4), presumably because he was facing a capital charge, i.e., kidnapping with bodily harm. However, this Court has made it quite clear that the fact that

> [illegible]

[illegible]

[illegible]

[illegible]

a defendant is charged with a capital offense does not render involuntary his plea of guilty entered in exchange for a lesser sentence. Gilmore v. People of the State of California, supra, 364 F.2d at 918.

Finally, appellant urges that a writ of habeas corpus should have been granted because the state court did not conduct an inquiry into his then present sanity at the time his plea was entered. Appellant does not now allege that he was insane at that time; however, he argues that "under the rule of Pate v. Robinson, 383 U.S. 375 (1966), there should have been some kind of hearing on appellant's mental state before he was convicted" (AOB 7). However, as pointed out by the District Court in its order, the Superior Court had before it a certification by the Superintendent of the Patton State Hospital that appellant had been found competent to stand trial but had left the hospital without permission. Unlike the situation in Pate v. Robinson, supra, at the time of the plea there was no suggestion by either appellant or his attorney that he was incompetent and therefore the trial court could properly proceed on the unchallenged assumption that petitioner was competent to stand trial.

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CONCLUSION

We respectfully submit that the order of the District Court denying appellant's petition for a writ of habeas corpus should be affirmed.

Dated: July 10, 1968

THOMAS C. LYNCH, Attorney General
of the State of California

ALBERT W. HARRIS, JR.
Assistant Attorney General

ROBERT R. GRANUCCI
Deputy Attorney General

Attorneys for Respondent-Appellee

RRG:pp
CR-SF
66-313

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

Dated: July 10, 1968

ROBERT R. GRANUCCI
Deputy Attorney General

APPENDICES

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES W. DENNIS,	)	
Petitioner,	)	
-vs-	)	No. 44833
PEOPLE OF THE STATE OF CALIFORNIA, et al.,	)	**ORDER**
Respondent.	)	

This is a petition for a writ of habeas corpus filed herein under the provisions of 28 U.S.C. § 2241, by a prisoner at the California State Prison at San Quentin, now in custody of the Warden thereof under the commitment of the California Superior Court in and for the County of Riverside, California, finding him guilty, pursuant to his pleas of guilty to charges of assault with a deadly weapon with intent to commit murder (Cal. P. C. Sec. 217), forcible rape (Cal. P. C. Sec. 261.(3)), kidnapping for the purpose of robbery with the infliction of bodily harm (Cal. P. C. Sec. 209) and first degree robbery (Cal. P. C. Sec. 211).

On September 28, 1962, petitioner was sentenced to life imprisonment in the state prison without the possibility of parole as to the kidnapping offense (for which the punishment may be death or life imprisonment without the possibility of parole (Cal. P. C. Sec. 209), and to the terms prescribed by law as to the other offenses, all sentences to run concurrently.

On March 2, 1966, this Court issued an Order to

Show Cause; on March 25, 1966, respondent filed its Return; and, on June 3, 1966, petitioner filed a Traverse to the Return.

On December 16, 1966, this Court made its order requiring petitioner to set forth more specific allegations and on February 3, 1967, petitioner filed a Supplemental Traverse to the Return.

It appears from the record that petitioner was originally arrested on July 13, 1960 and indicted for the offenses above set forth; that he entered pleas of not guilty and also not guilty by reason of insanity; that on September 24, 1960, he was committed to Patton State Hospital by the Superior Court upon a finding of doubt as to his then present sanity; that petitioner escaped from Patton State Hospital; that a court bench warrant, dated September 12, 1962, issued on the basis of an affidavit by the District Attorney of Riverside County containing a certification by the Superintendent of the Patton State Hospital to the effect that petitioner had been found competent but had left the hospital without permission, and suggesting petitioner's return to the custody of the court.

Petitioner was eventually apprehended in Florida and brought before the court for arraignment on September 24, 1962. The Public Defender, Mr. Biddle, was appointed to represent petitioner and the case was set for trial or further proceedings.

On September 28, 1962, represented by Mr. Biddle, Public Defender, petitioner withdrew his former pleas of not guilty and not guilty by reason of insanity and on the same day was sentenced as already above set forth.

Petitioner contends (1) that he was inadequately represented by counsel, and (2) that his pleas of guilty to

the above charges were involuntary, alleging in substance and effect that he was mistreated by officials after his arrest in July, 1960 and during his stay at Patton State Hospital; that after his return to court from Florida, his court-appointed counsel visited him for the first and only time on September 27, 1962; that the attorney, Mr. Biddle, had been a member of the District Attorney's staff when petitioner was originally charged in 1960; that the attorney advised him that his case was serious, threatened petitioner's life with the gas chamber and pressured him into pleading guilty; that his attorney told him that his escape from the hospital had made everyone mad at him and, further, told him:

> "That if petitioner would plead guilty, he, Mr. Biddle, could get petitioner life imprisonment. Mr. Biddle explained that California did not have such sentence as life without possibility of parole, that petitioner would be eligible for parole after seven years. He warned petitioner that if he plead guilty that the Presiding Justice would state life without possibility of parole but only for the benefit of public and that petitioner was not to become upset when the Judge state (sic) life without possibility of parole. But if petitioner wished to have him, counselor, fight the case petitioner would receive the death sentence, because everybody were (sic) mad as (sic) petitioner for running away from the hospital." (Traverse 2d, p. 13).

Petitioner further alleges in substance that he asserted his innocence of the crimes but that his counsel pointed out to him that he was a native of Georgia and expressed the view that "if you were accused of raping and robbing white women and shooting a white man in Georgia - why I doubt whether you would have gotten to the jail"; that petitioner did not know what else to do but to let his counsel enter the pleas of guilty "to charges petitioner did not commit".

Concerning petitioner's allegation that his attorney

had been a member of the District Attorney's staff when petitioner was originally charged, the Reporter's Transcript of September 28, 1962 (pp. 1-2) shows that this circumstance was fully explained in open court and that defendant approved of the appointment.

Petitioner's allegation that his attorney alluded to the possibility of the gas chamber and to the circumstances of the effect of his escape from Patton, and pressured him into pleading guilty, does not amount to a substantial allegation of coercion. The gas chamber was a real possibility because petitioner was charged with violation of Cal. Penal Code § 209 (which provides the penalty of death or life imprisonment without possibility of parole in cases where the person subjected to kidnapping suffers bodily harm). It was counsel's duty to frankly advise petitioner of all the circumstances.

Concerning petitioner's contention that his attorney was incompetent and that petitioner was denied adequate representation by counsel, petitioner's allegations that his counsel visited him but once does not necessarily amount to a charge of inadequacy of representation.

There is nothing to indicate that counsel failed to properly investigate and consider possible defenses. Nothing is alleged that would negate the possibility that counsel's information concerning the available evidence justified the advice to plead guilty notwithstanding petitioner's alleged assertion of innocence. Certainly, such advice should not be presumed to have been given by the attorney through incompetence or malice.

Petitioner's allegation that his attorney told him

that he would be eligible for parole on the kidnapping charge in seven years, must be considered in the light of the proceedings at time of plea. (Reporter's Transcript (RT p. 3), which proceedings were as follows:

> "MR. BIDDLE: Count two, Your Honor, with respect to count two, it is the defendant's desire to enter a plea pursuant to Section 1192.3 of the Penal Code, under which section is imprisonment <u>without</u> possibility of parole. (emphasis added). If it is agreeable with the District Attorney's Office, it is the defendant's desire to enter a plea to count two."

California Penal Code § 1192.3 allows a defendant charged with an offense to specify in his plea of guilty the punishment he is to receive. If the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant cannot be sentenced to a punishment more severe than that specified in the plea.

The Reporter's Transcript further shows that the Court then read count two to the petitioner (RT 3), and proceeded to explain to petitioner the consequence of his plea (RT 4-5) as follows:

> "THE COURT: . . . Your counsel, the Public Defender here, has stated that you wish to enter a plea of guilty to this count and admit the fact that you were armed with a deadly weapon, as provided in Section 1192.3 of the Penal Code of this State, that you be imprisoned in the State Prison for the term no greater than the remainder of your natural life, <u>without possibility of parole.</u> Is that your understanding of this matter? (emphasis added).

> THE DEFENDANT: Yes, sir.
>
> THE COURT: Is it your wish to enter a plea of guilty to count two as charged in the indictment as I have just read it to you?
>
> THE DEFENDANT: Yes.
>
> THE COURT; No force or duress has been exerted upon you?
>
> THE DEFENDANT: No, sir.
>
> THE COURT: And may I ask if there have been any promises. Has any promise been given you with respect to this plea?
>
> THE DEFENDANT: No, sir.
>
> THE COURT: The plea of guilty to count two of the indictment will be entered with a further provision this plea is made under Section 1192.3 of the Penal Code, with the admission the defendant was armed with a deadly weapon."

The trial court then proceeded to read each of the other counts of the indictment to petitioner and petitioner pled guilty to each of the counts already above set forth.

The Reporter's Transcript further shows that petitioner waived time for sentence (RT 11-12) and that the court then imposed sentence on count two:

> THE COURT: . . . As to count two of the indictment it will be the judgment and order of the Court that Charles William Dennis be imprisoned in the State Prison for the remainder of his natural life, without possibility of parole."

Petitioner's allegation concerning his attorney's assurance of parole eligibility in seven years must be considered in the context of these proceedings.

We can understand that, where (as in <u>Gilmore</u> v.

California, 364 F.2d 916, 918-919 (9th Cir. 1966) a petitioner alleges that his attorney had told him that there was a "promise" by the Court, "an agreement" with the District Attorney, and in effect a "deal" for a lenient sentence, the allegation (allowing for lack of skill in pleading), should be regarded as impliedly stating that there was such a deal in which the court and prosecution participated. Here, however, petitioner's allegation concerning what his attorney told him falls far short of stating, implying or suggesting any statement by the attorney that such a deal had been made with the court and/or the prosecuting attorney.

Petitioner merely alleges that the attorney explained to him (erroneously) that California did not have life sentence without possibility of parold and that petitioner would be eligible for parole after seven years, coupled with the attorney's further statement to the effect that the judge would, nevertheless, state "life without possibility of parole."

There is nothing in this allegation to support the implication that petitioner was being told of any "deal" for life with possibility of parole - only the attorney's erroneous explanation that petitioner would get parole in seven years no matter what the judge on the bench might say.

We cannot, therefore, treat petitioner's allegation as intending to state either that there was such a deal or even that the attorney told him there was such a deal.

The petition in the pending case falls within the rule, recognized in Gilmore, supra, that mere disappointment at the severity of the sentence received upon a plea of guilty is no ground for habeas corpus "even where defendant's counsel expressed an opinion that leniency will be granted". (emphasis added). See Pinedo v. United States, 347 F.2d

142 (9th Cir. 1965); <u>United States</u> v. <u>Parrino,</u> 212 F.2d 919 (2d Cir. 1954).

Reverting to our previous reference to alleged incompetency of counsel, we do not believe that the mere allegation that the attorney erroneously stated the law regarding penalty on conviction of count two alleges incompetency of counsel - especially when read in connection with the transcript of proceedings already cited above, indicating that counsel did in open court correctly set forth the alternative penalty of life without possibility of parole and that defendant indicated his understanding thereof.

For the reasons above set forth the Court concludes that petitioner's application for the writ of habeas corpus does not allege facts upon which relief could be granted, and it is therefore ordered as follows:

(a) That petitioner's application for the writ of habeas corpus be denied; (b) that the Order to Show Cause heretofore issued herein be discharged; and (c) that these proceedings be dismissed.

Dated: October 10th, 1967.

W. T. SWEIGERT
UNITED STATES DISTRICT JUDGE

66-313
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FILED

CLERK, U. S. DIST. COURT
SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHARLES W. DENNIS,	)	
Petitioner,	)	
-vs-	)	No. 44833
THE PEOPLE OF THE STATE OF CALIFORNIA and LAWRENCE E. WILSON, Warden, California State Prison at San Quentin, California,	)	<u>O R D E R</u>
Respondent.	)	

Petitioner, Charles W. Dennis, a prisoner at the California State Prison at San Quentin, California, has petitioned this Court for a Writ of Habeas Corpus pursuant to the provisions of 28 U.S.C. § 2241 (1964) after exhausting his state remedies as required by 28 U.S.C. § 2254 (1964).

On March 2, 1966, this Court issued an Order to Show Cause; on March 25, 1966, respondent filed a Return; and on June 3, 1966, petitioner filed a Traverse to the Return.

The record herein shows that on September 28, 1962, in the Superior Court of the State of California in and for the County of Riverside, petitioner was convicted, after entering a plea of guilty, of violating Cal. Penal Code §§ 217 (assault with a deadly weapon with intent to comit murder), 261(3) (forcible rape), 209 (kidnapping with bodily harm) and 211 (robbery of the first degree). Petitioner was sentenced to life imprisonment in the state prison

and to the terms prescribed by law as to the other offenses, all sentences to run concurrently.

Petitioner challenges his convictions upon several grounds. However, petitioner's basic contentions are that he was coerced into pleading guilty to the offenses charged and that he was not adequately represented by counsel.

As background information for what actually happened, petitioner has supplied the following account:

> "Petitioner was a resident of San Bernardino, California from 1959 until about June of 1960. Petitioner met the alleged victim ... around the middle of March 1960 at a place of entertainment called 'Small's Night Club' in San Bernardino. Petitioner and the alleged victim developed an intimate relationship, which later culminated into secret rendezvouses. The alleged victim, being married and with family, preferred discretion and exercised precautionary methods to prevent discovery of said meetings. The alleged victim refused to give petitioner her telephone number, but did take the telephone number of the petitioner with a promise to call petitioner shortly after the first meeting. Approximately two weeks later the alleged victim did call petitioner by phone, and a date was set for the next meeting. Petitioner and the alleged victim went to a drive-in theater, and on that date an act of sexual intercourse was consumated, followed by similar in nature thereafter. On or about June 28, 1960, petitioner, following a change of residence from San Bernardino to Riverside, California, received another call from the alleged victim, requesting that the petitioner meet her on the next day, which was June 29, 1960. Petitioner agreed to meet her. The plan was to meet in a secluded locality, which required that both the petitioner and the alleged victim drive their individual vehicles to the designated place of rendezvous. The alleged victim parked her car behind the car of the petitioner and thereafter joined the petitioner in his car. Several minutes had passed when a man driving a light truck appeared on the scene. Upon perceiving the petitioner, a Negro, and the alleged victim, a white woman, seated in the car together, the truck driver, without respect for the privacy of others, reached into his glove compartment and withdrew what appeared to be a gun. Petitioner, without knowledge as to what might transpire, removed a weapon, which was concealed under the front seat of his car, and fired at the approaching intruder. Petitioner and the alleged victim sped away from the scene of the alleged crime with the petitioner driving his car, unaware of

> "shot.
> "After the petitioner and the alleged victim had driven a short ways away, petitioner then let the alleged victim out of his car so she could return to her own vehicle.
> "Upon returning to the scene of the alleged crime, the alleged victim, with the intention of protecting herself from exposure and perhaps destruction to her family life, gave a different version from what had transpired to the police.
> "Petitioner was arrested on or about July 5, 1960, in the County of Riverside, State of California and taken to the County Jail of said county." Petition for Habeas Corpus, pp. 5, 6.

After his arrest, petitioner alleges, in substance and effect, that the following events took place: That on July 9, 1960, he appeared before a magistrate who, after reading the complaint, dismissed the case; that the petitioner left the courtroom, presumably free, and was rearrested in the corridor and returned to jail; that on July 13, 1960, the Riverside County Grand Jury returned an indictment against petitioner charging him with the offenses to which he eventually pleaded guilty; that on July 15, 1960, he was arraigned on these charges and the public defender was appointed to represent him; that on September 24, 1960, the Court committed petitioner to the Patton State Hospital for a determination as to his sanity; that subsequently he escaped from this hospital and was picked up in Florida two years later and returned to Riverside County on or About September 22, 1962; that he was arraigned once again on September 24, 1962, and that on September 28, 1962, he withdrew his prior pleas of not guilty and not guilty by reason of insanity to the charges and entered pleas of guilty thereto. Petitioner does not make clear in his petition when he entered his original pleas of not guilty and not guilty by reason of insanity.

Petitioner alleges that at this September 28, 1962

court proceeding, Dr. Otto L. Gericke of Patton State Hospital reported to the Court that petitioner was sane and had escaped from the hospital. In addition, petitioner alleges that at this proceeding he waived time for judgment, waived reference to the probation officer and requested immediate sentencing.

In support of his contentions that his plea of guilty was coerced and that he was not adequately represented by counsel, petitioner, alleges the following: That following his arrest in the corridor of the courthouse on July 9, 1960, Mr. Deal of the Riverside Public Defender's office came to see him and informed him of the probability of getting sentenced to the gas chamber if he did not plead guilty; that thereafter a doctor visited him and declared him sane to stand trial; that following this doctor's diagnosis, petitioner was subjected to threats and harrassment by the District Attorney, police and the Public Defender which resulted in a complete mental breakdown of petitioner, whereupon, two doctors were sent to examine petitioner and concluded that petitioner was mentally unbalanced and that he should be committed to Patton State Hospital; that at the hospital petitioner was harrassed, interrogated and intimated and told by doctors there that he would die in the gas chamber if he persisted in his claim of innocence and as a result thereof he was finally driven to escape from the hospital; that after he was brought back to Riverside County on September 22, 1962, petitioner was represented by a Craig Biddle, the Riverside County Public Defender, who had been in the District Attorney's office at the time of petitioner's arrest in 1960; and that Mr. Biddle advised him that if he fought his case he would get the gas chamber, but

for parole in seven years. Under petitioner's present sentence he is never eligible for parole.

Petitioner also alleges that his counsel, Mr. Biddle, did not consult with him sufficiently to adequately represent him, to wit: only one time from the date of his return to Riverside, California on September 22, 1962, to the date of his final court appearance on September 28, 1962. Traverse, p. 13.

Petitioner further alleges in his petition that at the time of the offense he was an illiterate person without formal education and was ignorant of the law and its procedures, and that no one took time to explain things to him.

Finally, petitioner alleges that at no time during the proceedings was he warned or informed of his constitutional rights to remain silent, to have the assistance of counsel at all stages of the proceedings, etc.

From the foregoing it is the opinion of the Court that petitioner should supply the Court with additional facts before the Court decides if an evidentiary hearing is required, Most of petitioner's application is devoted to legal argument and to charges of "threats", "coercion" and "harrassment" by the authorities as well as a recitation of events prior to his arrest. This is not the purpose of habeas corpus. Petitioner must give the specific facts of "Who", "When" and "Where" in support of his alleged conclusions that he was coerced into pleading guilty and was not adequately represented by counsel. See Schlette v. California, 284 F.2d 827, 834 (9th Cir. 1960).

In his petition, petitioner does not make clear if he made any incriminating statements to the police, doctors or other authorities. All petitioner states is that he

referring to his plea of guilty as the confession or whether he made a confession prior to plea.

Accordingly, the Court will grant petitioner forty-five (45) days from the date of this Interim Order to file a Supplement. In this Supplement, petitioner should give a day by day account of what transpired from September 22, 1962 to September 28, 1962, giving approximate times, persons and places as to all events which support petitioner's contentions that he was coerced into pleading guilty and that he was not adequately represented by counsel. In addition, petitioner should give as best he can remember the gist of all conversations he had with various persons which would support these contentions.

With respect to the period of July 5, 1960, to the time of his escape, petitioner should likewise report the same information if it had a bearing on his September 28, 1962, plea of guilty. For example, if petitioner during this time made any oral or written incriminating statements to the police or others, he should give the circumstances surrounding the making of such statements (i.e., what caused him to make the statements), what the statements consisted of and other particulars, such as the approximate time of the statement, place and who was present. If petitioner cannot remember certain events or facts, he should so state.

Furthermore, in order to aid the Court in deciding the necessity of an evidentiary hearing, respondent is requested to supply the Court within forty-five (45) days of this Interim Order the following information: (1) a transcript of all judicial proceedings concerning petitioner from the date of his arrest on July 5, 1960, to his final court appearance on September 28, 1962, and (2) all medical reports

submitted to the Riverside Superior Court or in the possession of the prosecuting authorities which would show the mental condition of petitioner from the date of arrest on July 5, 1960, until September 28, 1962.

IT IS THE ORDER of this Court that petitioner and respondent have forty-five days from the date of this Interim Order to provide the above requested information.

Dated: December 16th, 1966.

W. T. SWEIGERT
UNITED STATES DISTRICT JUDGE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

COPY

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

-vs-

CHARLES WILLIAM DENNIS,
Defendant.

NO: CR 1678

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Before the Honorable John G. Gabbert, Judge, of the Superior Court, Department II, on

SEPTEMBER 28, 1962

APPEARANCES:

FOR THE PEOPLE:

WILLIAM O. MACKEY, DISTRICT ATTORNEY
BY: Roland Wilson, Chief Trial Deputy
Superior Courthouse, Riverside, California

FOR THE DEFENDANT:

W. CRAIG BIDDLE, PUBLIC DEFENDER
Superior Courthouse, Riverside, California

THOMAS J. NOLAN, CSR
RIVERSIDE, CALIFORNIA

APPENDIX C

SEPTEMBER 28, 1962 - PEOPLE VERSUS DENNIS

THE COURT: The matter of People versus Charles William Dennis.

MR. BIDDLE: This matter was regularly continued to this time for the setting of a trial date. I wish to advise the Court at the outset, I have advised the Defendant, Mr. Dennis, that at the time of the commission of the offense, that is when this case arose, when the indictment was filed in July of 1960, that I did, at that time, serve as a Deputy in the District Attorney's Office, but was not connected with the case; but I was serving in the District Attorney's Office.

Mr. Dennis is now aware of that fact and it is my understanding, even though this fact has been revealed to him, he is willing to allow me to serve as Public Defender. Possibly the Court could inquire.

THE COURT: I will ask you if you have been so advised.

THE DEFENDANT: Yes, sir.

THE COURT: Do you consent that Mr. Biddle, the Public Defender, represent you in this proceedings?

THE DEFENDANT: Yes, sir.

THE COURT: It is your understanding that Mr. Biddle, at the time this matter was brought before the Court in July of 1960, he was a Deputy in the Office of

the District Attorney?

THE DEFENDANT: Yes.

THE COURT: And has since been appointed Public Defender and you are agreeable he represent you?

THE DEFENDANT: Yes.

MR. BIDDLE: Your Honor, previously a plea of not guilty and not guilty by reason of insanity was entered and, at this time, we would ask the Court for permission to withdraw the plea for the purpose of entering a new and different plea.

THE COURT: Is that your desire, Mr. Dennis? The indictment here sets forth four different counts. At the time of your appearance before Judge Waite in 1960, you entered a plea of not guilty and not guilty by reason of insanity to these four counts.

THE DEFENDANT: That's right.

THE COURT: Is it your desire to withdraw your plea of not guilty and not guilty by reason of insanity to each of these four counts, at this time?

THE DEFENDANT: Yes, sir.

THE COURT: With respect to count one, have you discussed these with the Defendant?

MR. BIDDLE: Yes, I have.

THE COURT: Do you wish me to take up each count?

MR. BIDDLE: Count two, Your Honor, with respect to count two, it is the Defendant's desire to enter a plea pursuant to Section 1192.3 of the Penal Code, under which section is imprisonment without possibility of parole. If it is agreeable with the District Attorney's Office, it is the Defendant's desire to enter a plea to count two.

MR. WILSON: With respect to count two, there is the allegation of being armed. Is it the Defendant's desire to admit that he was armed with a deadly weapon?

MR. BIDDLE: Yes, the Defendant does admit he was armed with a deadly weapon at the time of the commission of the offense.

MR. WILSON: The People will recommend that the Court accept the plea to count two.

THE COURT: Mr. Dennis, I'm going to read to you count two which counsel has just mentioned. This count reads as follows:

> "For a further and separate cause of action, being a different offense of the same class of crimes, and offenses, as the charge set forth in each of the other accounts hereof, the said Charles William Dennis is accused by the Grand Jury of Riverside County and State of California, by this indictment, of the crime of violation of Section 209 of the Penal Code, kidnapping, a felony, committed as follows: The said

Charles William Dennis, on or about June 29, 1960, in the County of Riverside, State of California, did wilfully and unlawfully kidnap and carry away Marguerite Mulling Anderson for the purpose of committing robbery and, while in the commission of said offense, did inflict bodily harm upon the said Marguerite Mulling Anderson; that at the time of the commission of the offense charged in this count, the Defendant was armed with a deadly weapon, to wit: a .22 calibre revolver."

Your counsel, the Public Defender here, has stated that you wish to enter a plea of guilty to this count and admit the fact that you were armed with a deadly weapon, as provided in Section 1192.3 of the Penal Code of this State, that you be imprisoned in the State Prison for the term no greater than the remainder of your natural life, without possibility of parole. Is that your understanding of this matter?

THE DEFENDANT: Yes, sir.

THE COURT: Is it your wish to enter a plea of guilty to count two as charged in the indictment as I have just read it to you?

THE DEFENDANT: Yes.

THE COURT: No force or duress has been exerted upon you?

THE DEFENDANT: No, sir.

THE COURT: And may I ask if there have been any promises.

Has any promise been given you with respect to this plea?

THE DEFENDANT: No, sir.

THE COURT: The plea of guilty to count two of the indictment will be entered with a further provision this plea is made under Section 1192.3 of the Penal Code, with the admission the Defendant was armed with a deadly weapon.

MR. WILSON: May we have the Defendant admit, personally, the possession of a deadly weapon?

THE COURT: Yes. Mr. Dennis, do you admit at the time of the commission of the offense, with respect to count two involving Marguerite Mulling Anderson, you were armed with a deadly weapon, a .22 calibre revolver?

THE DEFENDANT: Yes, sir.

THE COURT: With respect to the remaining count three of the indictment and count one --

MR. BIDDLE: To count one, it is the Defendant's desire to enter a plea of guilty.

THE COURT: Count one, Mr. Dennis, reads as follows:

"Charles William Dennis is accused by the Grand Jury of Riverside County and State of California, by this indictment, of the crime of violation of Section 217 of the Penal Code (assault with a deadly weapon

with the intent to commit murder), a felony, committed as follows: The said Charles William Dennis, on or about June 29, 1960, in the County of Riverside, State of California, did wilfully and unlawfully assault Leonard Carl Lipskey with a deadly weapon, with the intent to commit murder."

What is your plea to that count?

THE DEFENDANT: Guilty.

THE COURT: Have any promises been made to you with respect to your plea with respect to count one?

THE DEFENDANT: No, sir.

THE COURT: A plea of guilty will be entered as to count one of the indictment. We will take up count three.

THE COURT: Is the Defendant's desire also under count three to enter a plea of guilty?

Count three, I will also read to you, Mr. Dennis,

"For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in each of the other counts hereof, the said Charles William Dennis is accused by the Grand Jury of the County of Riverside, and State of California, by this indictment, of the crime of violation of Section 211 of the Penal Code (robbery), a felony, committed as follows: The said Charles William Dennis, on or about June 29, 1960, in

the County of Riverside, State of California, did wilfully and unlawfully rob Marguerite Mulling Anderson of lawful money of the United States; that at the time of the commission of the offense charged in this count, the Defendant was armed with a deadly weapon, to wit: a .22 calibre revolver."

Do you understand that count?

THE DEFENDANT: Yes, sir.

THE COURT: Have any promises been made to you with respect to your plea to count three?

THE DEFENDANT: No, sir.

THE COURT: What is your plea to count three as I have read it to you?

THE DEFENDANT: Guilty.

THE COURT: The plea of guilty will be entered as to count three. Do you admit, further, that at the time of this offense you were armed with a deadly weapon, to wit, a .22 calibre revolver?

THE DEFENDANT: Yes, sir.

MR. WILSON: At this time, in view of his admission of his being armed with a deadly weapon, the Court should fix the degree as first degree.

THE COURT: The Court will fix the degree as set forth in count three as admitted by the Defendant as robbery in the first degree. As to count four.

MR. BIDDLE: It is the Defendant's

desire to enter a plea of guilty.

THE COURT: Count four is a further and separate cause of action, and I will read it to you, Mr. Dennis.

"For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in each of the other counts hereof, the said Charles William Dennis is accused by the Grand Jury of Riverside County and State of California, by this indictment, of the crime of violation of Section 261, subdivision 3, of the Penal Code (forceable rape), a felony, committed as follows: The said Charles William Dennis, on or about June 29, 1960, in the County of Riverside, State of California, did wilfully and unlawfully accomplish an act of sexual intercourse with Marguerite Mulling Anderson, a female who was not then and there the wife of the said Charles William Dennis, by force and violence against the will and without the consent of said Marguerite Mulling Anderson; that at the commission of the offense charged in this count, the Defendant was armed with a deadly weapon, to wit: a .22 calibre revolver."

You understand the nature of the charge set forth in count four?

THE DEFENDANT: That's right.

THE COURT: Have any promises been given

to you with respect to your plea as to count four?

THE DEFENDANT: No, sir.

THE COURT: Having in mind the count which I have read to you, count four, what is your plea to that count?

THE DEFENDANT: Guilty.

THE COURT: The plea of guilty will be entered as to count four.

MR. WILSON: An admission of being armed?

THE COURT: Do you also admit at the time of the commission of the offense alleged in count four that you were armed with a deadly weapon, a .22 calibre revolver?

THE DEFENDANT: Yes, sir.

THE COURT: The Defendant is ready for sentence?

MR. BIDDLE: Yes, Your Honor.

THE COURT: Will you waive time for sentence?

MR. BIDDLE: We will waive time.

THE COURT: Your counsel has indicated that you will waive time. Because of the circumstances which exist, are you willing to waive time for the imposition of sentence? The Court otherwise would have to continue this matter for the purpose of pronouncing judgment. Are you willing

to waive such a continuance and consent that the Court may impose sentence on the charges set forth, to which you have heretofore entered a plea of guilty?

THE DEFENDANT: Yes.

MR. WILSON: Do you desire me to arraign him for judgment?

THE COURT: Yes, would you please?

MR. WILSON: Mr. Charles William Dennis, it is my duty to advise you that on July 28, 1960, an indictment was filed in the Riverside Superior Court, charging you with a violation of Section 217 in count one and Section 209 in count two, and Section 211 in count three and Section 261.3 in count four. In counts two, three and four, there is an additional charge you were armed with a deadly weapon.

On July 15, 1960, you were arraigned in the Superior Court of the County of Riverside and stated your true name was Charles William Dennis. At that time, the Superior Court appointed the Public Defender to represent you, and the time for plea was continued to July 26, 1960.

On July 26, 1960, you entered a plea in the Superior Court of not guilty and not guilty by reason of insanity to each of the four counts in the indictment. The trial was set for October 17, 1960, at 10:00 o'clock a. m. in the Superior Court. Doctors were appointed to examine you and on September 21, 1960, pursuant to the reports of the doctors, the Court committed you to Patton State Hospital under Section 1368

of the Penal Code. On September 12, 1962, a Bench Warrant was issued, based on the affidavit of Dr. O. L. Gericke, Superintendent of Patton State Hospital, and upon your arrest, you were held without bail and on September 24, 1962, you were here in the Superior Court on the Bench Warrant which was issued on September 12, 1962, and at that time, the Public Defender was reappointed to represent you in the matter and it was set for September 28, 1962, at 11:00 a. m., Department II, for further proceedings and, on this date, September 28, 1962 you entered pleas of guilty to counts one, two, three and four of the indictment and in counts two and three and four, you admitted you were armed with a deadly weapon. You have now waived time for the matter to be continued for further proceedings and I will ask you if you have any legal cause to show why judgment should not now be pronounced.

THE DEFENDANT: No, sir.

THE COURT: Is there any legal cause to show why judgment should not be pronounced at this time?

MR. BIDDLE: No, Your Honor.

THE COURT: In the matter of Charles William Dennis, as to counts one, three and four of the indictment, it will be the judgment and order of the Court that the Defendant, Charles William Dennis, be sentenced to the State Prison for the term prescribed by law.

As to count two of the indictment, it will be the judgment and order of the Court that Charles William Dennis

be imprisoned in the State Prison for the remainder of his natural life, without possibility of parole.

The Sheriff of this County is ordered and directed to transport the Defendant to the Director of Corrections at the California Institute for Men at Chino, California to carry out this sentence.

* * * * *

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I, THOMAS J. NOLAN, a certified shorthand reporter, do hereby certify:

That on September 28, 1962, I took in shorthand a true and correct report of the testimony given and proceedings had in the above-entitled cause; and that the foregoing is a true and correct transcription of my shorthand notes taken as aforesaid, and is the whole thereof.

Dated: Riverside, California________________________, 19___

Thomas J. Nolan, CSR